

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013060645

ORDER GRANTING MOTION TO
DISMISS

On June 13, 2013, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Chino Valley Unified School District (District).

On June 21, 2013, the District filed a motion to dismiss Student's complaint (Motion). On June 24, 2013, Student filed an opposition.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

DISCUSSION

Student's complaint alleges a single issue, that Student has been denied an interdistrict transfer. Student argues that OAH should overturn the District's denial of an interdistrict transfer because Student will be required to attend a lower performing school, based upon state wide testing scores, if the transfer is denied.

The District asserts that Student's complaint should be dismissed because it fails to allege any claim relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE. While Student attempts to describe a claim pertaining to his educational placement, his complaint fails to describe a claim related to Student's receipt of special education or related services.

Additionally, jurisdiction to hear an appeal of a denial of an interdistrict transfer request, which is the sole issue alleged, lies with the county board of education or its designee. (Ed. Code, § 46001, subd. (b)(1).) No statute (State or federal), regulation or other authority provides a special education due process administrative law judge in an IDEA hearing with concurrent jurisdiction to hear or decide an appeal of a denial of an interdistrict transfer.

For these reasons, the District's motion to dismiss Student's complaint is granted.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.² Parent is encouraged to contact OAH for assistance if she intends to amend the due process hearing request.

ORDER

1. The District's request to dismiss Student's complaint is granted without prejudice.
2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).³

² Ed. Code, § 56505.

³ The filing of an amended complaint will restart the applicable timelines for a due process hearing.

3. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Student fails to file a timely amended complaint, the complaint will be dismissed.

5. All dates set in this matter are vacated and will be reset if Student timely files an amended complaint.

Dated: June 24, 2013

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings